

REMARKS

Claims 12, 16 to 19 and 21 to 27 have been amended.

Claim 12, 16 to 19 and 21 to 27 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants traverse, in part, this rejection.

The Office Action stated: that the terms “easy”, “essentially” and “type” in Claims 12, 16 to 19 and 21 to 27 is a relative term which renders the claim indefinite; and that the terms “easy”, “essentially” and “type” are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicants traverse, in part, this statement.

The term “easy” in the phrase “easy-open form” is not indefinite.

Webster's Seventh New Collegiate Dictionary, 1963, states:

“easy ...1: causing or involving little difficulty ...(~problem)” [Page 261]

The tear line provides means making it easy to open the packaging (20). The term “easy” is also defined by its associated disclosure in the application – see page 1, lines 3 to 7, page 2, lines 14 to 20, page 3, lines 26 to 29, and page 4, lines 8 to 12, original Claim 1, and the Abstract.

WO 059747 (of record, and cited by the Examiner against Claim 12) repeatedly uses the phrase “easy open package”. Such European application has a U.S. Priority application, U.S. inventors and a U.S. assignee (applicant)

corporation. WO 059747 establishes that the term “easy” and the phrase “an easy-open form of packaging” is not indefinite, and shows that one skilled in the art is apprised of the scope of the claimed invention.

The term “essentially” in the phrase “essentially parallel” is not indefinite.

The Random House Dictionary, (1983), states:

“essential...2. pertaining to or constituting the essence of a thing.” [Page 487]

“essence...1. the basic, real, and unvariable nature of a thing or its significant individual feature or features.” [Page 487]

“substantial...8. of or pertaining to the essence of a thing; essential, material, or important.” [Page 1418]

So the claim amendments using the term “substantially” are supported by the disclosure, and Figure 2 supports the term “parallel” without such term.

The phrase “substantially parallel” is not indefinite and is accepted claim language. For example, Claim 1 of U.S. Patent No. 5,000,321 (of record) states:

“1...substantially parallel...”

This rejection should be withdrawn.

Claims 12 to 30, 32, 34 to 36 and 38 to 41 have been rejected under 35 U.S.C. 102(b) as being anticipated by Schlaeppli et al. (European Published Patent Application No. 0596747). Applicants traverse this rejection.

The Office Action stated that Schlaeppli et al. discloses a process comprising manufacturing a multilayer packaging film for an easy open form of packaging (col. 1, lines 1 to 3) having at least one line of perforations (Figure 1,

number 8) that are provided in a plastic surface layer of the packaging and serve as an aid for alignment of a tear line propagating in the packaging film upon tearing open the packaging (col. 2, lines 45 to 49), including cutting the perforations into a surface layer which is in the form of a film (col. 3, lines 9 to 11), and joining the precut film to the other layers to make up a composite film (col. 3, lines 10 to 13). Schlaeppi et al. does not teach or suggest any of applicants' present claims.

The Office Action stated that Schlaeppi et al. discloses that the film is joined to the other layers by means of an adhesive layer to make up a composite film (col. 4, lines 19 and 20). This information does not provide anticipation.

The Office Action stated that Schlaeppi et al. discloses that the perforations are cut before coating the film with adhesive (col. 4, lines 15 to 21). This information does not provide anticipation.

The Office Action stated that Schlaeppi et al. discloses that the perforations are cut after coating the film with adhesive (col. 5, lines 15 to 21). This information does not provide anticipation.

The Office Action stated that Schlaeppi et al. discloses that the two lines of perforations are cut essentially parallel to each other and a distance apart as guidelines on both sides of a tear which propagates in the film on tearing open the packaging (figure 1, numbers 8a and 8b).

The Office Action stated that Schlaeppi et al. discloses that the packaging film is employed for the production of pouch-type forms of packaging (figure1). This information does not provide anticipation.

The Office Action stated that Schlaeppi et al. discloses that the film is joined to the other layers by means of extrusions to make up a composite film (col. 4, lines 20 to 21). This information does not provide anticipation.

The Office Action stated that Schlaeppi et al. discloses that the perforations are situated on the inner side of the packaging (col. 6, lines 24 to 25). This information does not provide anticipation.

Original claim 10 specifies that "a notch (24) for initiating tearing is provided in the region of the perforations (18, 18')". This same recitation was carried over into replacement Claims 30, 32 and 36. The Examiner incorrectly rejected such three claims as being anticipated by Schlaeppi et al. The subject recitation has been inserted into independent Claim 12, so none of applicants' claims are anticipated by Schlaeppi et al.

The Office Action stated that Schlaeppi et al. discloses a notch for initiating tearing is provided in the region of the perforations (col. 1, line 10). Applicants traverse this statement because the cited portion of Schlaeppi et al. is the prior art that Schlaeppi et al. invention seeks to avoid. There is no basis in fact or law to try to change the disclosed invention of Schlaeppi et al. by inserting therein the prior art over which the disclosed invention of Schlaeppi et al. sought to avoid and overcome.

The prior art disclosed by Schlaeppi et al. is not part of the invention of Schlaeppi et al.

The prior section of Schlaeppi et al. states, in part:

"Many efforts have been made, particularly in the food industry, to increase the ease of opening a consumer oriented plastic package. These include various methods to initiate a tear in the package and to utilize tearing of a package wall along a predetermined tear line to provide access to the contents of a package. There are several ways in which to initiate such a tear, such as by the inclusion of tear notches, edge perforations, serrations in the seals, tear strips and laser etching. Most of these methods fully penetrate the film thickness and are limited to providing tear lines in the sealed area. Often, tear notches end up in the area of the product receiving chamber due to manufacturing malfunctions. This results in the package's integrity being compromised and product spoilage and/or leakage occurring. Oriented films such as oriented polypropylene have been used in such packages because they tend to resist tearing and opening unless they are perforated near the edge to initiate such tearing. Once started, the tear tends to propagate very easily." (Emphasis supplied) [Column 1, lines 4 to 24]

Schlaeppli et al. teaches one skilled in the art to not include or use perforations in Schlaeppli et al.'s disclosed invention. Accordingly, Schlaeppli et al. does not anticipate applicants' claimed invention. The Examiner to include perforations in the disclosed invention of Schlaeppli et al. is clearly in error and goes against the disclosure of Schlaeppli et al.

This rejection should be withdrawn.

Claims 30 to 34, 36, and 37 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Schlaeppi et al. in view of Olivieri et al. (WO 98/29312). Applicants traverse this rejection.

Schlaeppi et al. does not teach or suggest applicants' claimed invention. Olivieri et al. does not cure any of the defects of Schlaeppi et al. in the quest for applicants' claimed invention.

The Examiner has not shown in the record that one ordinarily skilled in the art would have any reason or motivation to combine Schlaeppi et al. and Olivieri et al. in the search for applicants' claimed invention. Schlaeppi et al. teaches not to include any perforations in Schlaeppi et al.'s invention since manufacturing malfunctions of packages having perforations can result in misplaced perforations and the like that ruins the integrity of the packages with product spoilage and/or leaking. The addition of Olivieri et al. would be against the teaching of Schlaeppi et al.

The Examiner has not factually established a prima facie showing of obviousness in the record. Furthermore, applicants have factually rebutted any prima facie showing of obviousness.

The Office Action stated that Schlaeppi et al. disclosed the process and packages described above. Applicants traverse this statement as they have shown above is incorrect.

The Office Action stated that Schlaeppi et al. fails to disclose that the notch is situated between the two lines of perforations. Schlaeppi et al. does

not teach the use of any perforations, in any location, in Schlaeppi et al.'s disclosed invention, and directs away from perforations.

The Office Action stated that Olivieri et al. discloses a notch in between the two lines of perforations (figure 8, number 431) for the purpose of tearing the materials forming the pack (page 15, lines 3 and 4). Nothing in the record allows or provides motivations to combine Olivieri et al. with Schlaeppi et al. Instead, Schlaeppi et al. directs away from the inclusion of any perforations in Schlaeppi et al.'s disclosed invention.

Olivieri et al. produces its line of precuts of microperforations using a laser beam on a multilayered film. A problem with this manufacturing approach is that malfunctions can result in cutting through the entire multilayered film with the result of product spoilage and/or leakage. See column 1, lines 51 to 54, of the prior art section of Schlaeppi et al. There is no reason of record why one of ordinary skill in the art would choose the Schlaeppi et al. method of forming a line of perforations over the method, and problems of Olivieri et al.'s laser method on multilayered films. All of the teachings of record must be considered under Section 103 and none can be ignored/eliminated without sufficient reasons/facts in the record.

The Office Action stated that, therefore, it would have been obvious to one of ordinary skill in the art to provide Schlaeppi et al. with a notch in between the two lines of perforations in order to tear the materials forming the pack (page 15, lines 3 and 4) as taught by Olivieri et al. Applicants traverse this statement because Schlaeppi et al. directs away from the inclusion of any perforations.

This rejection should be withdrawn.

Reconsideration, reexamination and allowance of the claims is requested.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Claim 12 has been replaced with the following revised version of Claim 12, as amended;

12. (Once Amended) A process comprising manufacturing a multi-layer packaging film (10), for [an easy-open form of] a packaging (20) having at least one line of perforations (18, 18') that are provided in a plastic surface layer of the packaging and serve as an aid for alignment of a tear line propagating in the packaging film (10), upon tearing open the packaging (20), including cutting the perforations (18, 18') into a surface layer which is in the form of a film (14), and joining the said pre-cut film (14) to the other layers (12) to make up a composite film (10), and providing a notch (24) for initiating tearing in the region of the perforations (18, 18') said packaging (20) being easy to open by means of said tear line.

Claim 16 has been replaced with the following revised version of Claim 16, as amended:

16. (Once Amended) The process according to Claim 14, wherein two lines of perforations (18, 18') are cut parallel or [essentially] substantially parallel to each other and a distance (e) apart as guidelines on both sides of a tear which propagates in the packaging film (10) on tearing open the packaging (20), and the notch (24) is situated between two lines of perforations (18, 18').

Claim 17 has a been replaced with the following revised version of Claim 17, as amended:

17. (Once Amended) The process according to Claim 16, wherein the packaging film is employed for the production of [pouch-type] pouch forms of packaging.

Claim 18 has been replaced with the following revised version of Claim 18, as amended:

18. (Once Amended) The process according to Claim 15, wherein two lines of perforations (18, 18') are cut parallel or [essentially] substantially parallel to each other and a distance (e) apart as guidelines on both sides of a tear which propagates in the packaging film (10) or tearing open the packaging (20), and the notch (24) is situated between two lines of perforations (18, 18').

Claim 19 has been replaced with the following revised version of Claim 19, as amended:

19. (Once Amended) The process according to Claim 18, wherein the packaging film is employed for the production of [pouch-type] pouch forms of packaging.

Claim 21 has been replaced with the following revised version of Claim 21, as amended:

21. (Once Amended) The process according to Claim 20, wherein two lines or perforations (18, 18') are cut [essentially] parallel or substantially parallel to each other and a distance (e) apart as guidelines on both sides of a tear which propagates in the packaging film (10) on tearing open the packaging (20), and the notch (24) is situated between two lines of perforations (18, 18').

Claim 22 has been replaced with the following revised version of Claim 22, as amended:

22. (Once Amended) The process according to Claim 21, wherein the packaging film is employed for the production of [pouch-type] pouch forms of packaging.

Claim 23 has been replaced with the following revised version of Claim 23, as amended:

23. (Once Amended) The process according to Claim 12, wherein two lines of perforations (18, 18') are cut [essentially] parallel or substantially parallel to each other and a distance (e) apart as guidelines on both sides of a tear which propagates in the packaging film (10) on tearing open the packaging (20), and the notch (24) is situated between two lines of perforations (18, 18').

Claim 24 has been replaced with the following revised version of Claim 24, as amended:

24. (Once Amended) The process according to Claim 23, wherein the packaging film is employed for the production of [pouch-type] pouch forms of packaging.

Claim 25 has been replaced with the following revised version of Claim 25, as amended:

25. (Once Amended) The process according to Claim 13, wherein two lines of perforations (18, 18') are cut [essentially] parallel or substantially parallel to each other and a distance (e) apart as guidelines on both sides of a tear which

propagates in the packaging film (10) on tearing open the packaging (20), and the notch (24) is situated between two lines of perforations (18, 18').

Claim 26 has been replaced with the following revised version of Claim 26, as amended:

26. (Once Amended) The process according to Claim 25, wherein the packaging film is employed for the production of [pouch-type] pouch forms of packaging.

Claim 27 has been replaced with the following revised version of Claim 27, as amended:

27. (Once Amended) The process according to Claim 12, wherein the packaging film is employed for the production of [pouch-type] pouch of packaging.

Claim 30 has been cancelled.

Claim 31 has been replaced with the following revised version of 31, as amended:

31. (Once Amended) Packaging according to Claim [30] 29, wherein the notch (24) is situated between [the] two lines of perforations (18, 18').

Claim 32 has been cancelled.

Claim 33 has been replaced with the following revised version of Claim 33, as amended:

33. (Once Amended) Packaging according to Claim [32] 28, wherein the notch (24) is situated between [the] two lines of perforations (18, 18').

Claim 36 has been cancelled.

Claim 37 has been replaced with the following revised version of Claim 37, as amended.

37. (Once Amended) Packaging according to Claim [36] 35, wherein the notch 924) is situated between [the] two lines of perforations (18, 18').

New Claim 42 has been added.